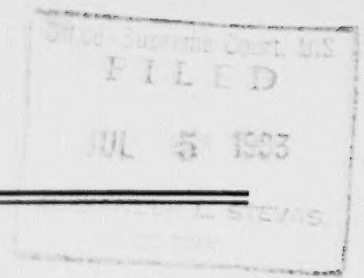


82-2052

No. _____



IN THE

Supreme Court of the United States

October Term, 1982

AUDREY DEFEX,

Petitioner,

-against-

PAN AMERICAN WORLD AIRWAYS, INC.
& INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN & HELPERS
OF AMERICA,

Respondents.

BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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COUNTERSTATEMENT OF QUESTION PRESENTED

Should the United States Supreme Court grant Certiorari after the United States Circuit Court of Appeals for the Second Circuit sustained the judgment of United States District Court Judge Pratt, granting a motion for Summary Judgment against the appellant after an evidentiary hearing?

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**BRIEF IN OPPOSITION
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TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

POINT I

**CERTIORARI MAY NOT BE GRANTED
AFTER A CIRCUIT COURT OF APPEALS SUSTAINED
A JUDGMENT OF DISMISSAL BASED UPON
A FINDING OF FACT, UNLESS THE COURT CONCLUDES
THE FINDING OF FACT WAS UNSUBSTANTIATED
BY ANY FACTS IN THE RECORD.**

The record on appeal, at page A 221, sets forth that the District Court stated, "the Court finds as a fact that plaintiff never asked them to file a grievance on her behalf," referring to the defendant, Local 732 IBT. Nowhere in the record or the

brief of the Appellant is there any indication that the Court's finding was capricious or arbitrary and that its findings were not based upon any facts in the record. It is patently clear that the Court had ample basis for its findings and decision after a full evidentiary hearing, e.g. *Rolf v. Blyth, Eastman Dillon & Co.*, 570 F. 2d 38 (2d Cir.), cert. denied, 439 U.S. 1039 (1978). The brief of the Appellant merely seems to complain of the Court's findings of fact without citing any legal basis for stating that the Court, "erroneously concluded that Plaintiff did not rely upon the Union to file a grievance."

POINT II

THE BURDENING OF THE SUPREME COURT WITH UNNECESSARY AND FRIVOLOUS APPEALS SHOULD BE DISCOURAGED BY IMPOSITION OF SANCTIONS.

For the reason that the Appellant has presented no valid legal basis for the reversal of the Circuit Court of Appeals' decision, that petition should be dismissed as frivolous and without any basis in law and that the Court herein should impose sanctions upon the Appellant and grant to the Appellee, attorneys' fees and damages together with costs and disbursements (Supreme Court Rules, 49.2).

CONCLUSION

The judgment of the United States Court of Appeals dismissing plaintiff's appeal should be sustained and Certiorari herein denied, together with sanctions against the Appellant.

Respectfully submitted,

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